

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SBM SITE SERVICES, LLC,)	4:17CV3028
)	
Petitioner,)	
)	MEMORANDUM
v.)	AND ORDER
)	
RAUL ALVAREZ,)	
)	
Respondent.)	
_____)	

This matter is before the court on the Findings and Recommendation filed on January 19, 2018, by Magistrate Judge Susan M. Bazis (Filing No. [23](#)). Judge Bazis has recommended that Petitioner’s Motion to Compel Arbitration (Filing No. [18](#)) be denied for lack of a justiciable case or controversy. No objections have been filed to the findings and recommendation within the time permitted by [28 U.S.C. § 636\(b\)\(1\)](#), [Federal Rule of Civil Procedure 72\(b\)\(2\)](#), and [Nebraska Civil Rule 72.2\(a\)](#).

In any event, I have conducted a de novo review and find that Judge Bazis has correctly found the facts and applied the law.¹ The Magistrate Judge’s Findings and Recommendation therefore will be adopted, the Motion to Compel Arbitration will be denied, and the Petition to Compel Arbitration (Filing No. [1](#)) will be dismissed without prejudice.²

¹ While there is a split of authority on the issue, it has been held that motions to compel arbitration are “nondispositive” for purposes of [Federal Rule of Civil Procedure 72](#). See [Wojtalewicz v. Pioneer Hi-Bred Int’l, Inc.](#), 944 F. Supp. 2d 715, 721 (D. Neb. 2013); [Credit Suisse Securities \(USA\) LLC v. Hilliard](#), No. 8:07CV17, 2007 WL 2137824 at *2 (D.Neb. July 23, 2007).

² As the court explained in a Memorandum and Order entered on July 10, 2017 (Filing No. [17](#)), a petition to compel arbitration filed under Section 4 of the Federal Arbitration Act is treated as a motion rather than a pleading. See [9 U.S.C. § 6](#). Because

Accordingly,

IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation (Filing No. [23](#)) are adopted.
2. Petitioner's Motion to Compel Arbitration (Filing No. [18](#)) is denied.
3. Petitioner's Petition to Compel Arbitration (Filing No. [1](#)) is dismissed without prejudice.
4. Judgment shall be entered by separate document.
5. The clerk of the court shall close the court file for statistical purposes.

DATED this 6th day of February, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

Petitioner erroneously docketed its petition as a complaint, the court directed Petitioner to file a separate motion to compel arbitration in order to progress the matter. Although no "action" was commenced by the filing of the petition, *see* [Fed. R. Civ. P. 3](#), judgment will be entered by separate document dismissing the petition without prejudice, *see* [Fed. R. Civ. P. 54\(a\)](#), [58](#); [9 U.S.C. § 16\(a\)\(1\)\(B\)](#), and the court file will then be closed.